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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,272	03/01/2002	Glen Albert Guillemette	445-008059-US(I01)	5202
2512	7590	03/22/2004	EXAMINER	
PERMAN & GREEN			DEL SOLE, JOSEPH S	
425 POST ROAD			ART UNIT	
FAIRFIELD, CT 06824			PAPER NUMBER	

1722

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/087,272	GUILLEMETTE ET AL.	
	Examiner	Art Unit	
	Joseph S. Del Sole	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because **a)** reference numeral "32" in Figure 4 is drawn to the incorrect feature, as stated at page 8, line 14 "32" should point to the "upstream seat element". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. Claims 1, 4, 5 and 6 are objected to because of the following informalities: **a)** lines 44-45 of claim 1 state "a third surface constructed on said die, said second surface having at least a partially", however the claim has already recited the second surface being spherical and thus the Examiner believes this limitation should be -- a third surface constructed on said die, said third surface having at least a partially --; **b)** lines 18-19 of claim 4 state "a third surface constructed on said die, said second surface having at least a partially", however the claim has already recited the second surface being spherical and thus the Examiner believes this limitation should be -- a third surface constructed on said die, said third surface having at least a partially --; **c)** "spherical\_interface" at line 23 of claim 4 should be changed to -- spherical interface --; **d)** at lines 30-31 of claim 4, "downstream from the center of said radius of curvature of said first and second surfaces" should be changed to --downstream from the center of said radius of curvature of said first, second and third surfaces-- to better characterize the invention; and **e)** at line 4 of claims 5 and 6 respectively the limitation "said

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attachment" is recited, however parent claim 4 does not recite an attachment and therefore this limitation lacks antecedent basis; antecedent basis should be provided in claim 4, however the Examiner will interpret the attachment mechanism of claims 5 and 6 as the attachment mechanism as described in claim 1. Appropriate correction is required.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,382,944 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 3 recites an apparatus for adjusting the relative position of a die in an extrusion die assembly having an inlet and an outlet, wherein the configuration of the outlet is adjustable (claim 3, lines 1-3); an upstream seat element positioned in the recess of the die body, said upstream seat element constructed with a first surface having at least a partially spherical shape, said spherical shape having a radius of

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curvature with a center (claim 3, lines 5-8); a downstream seat element constructed for assembly with said upstream seat element, said downstream seat element constructed with a second surface having at least a partially spherical shape, said spherical shape having a radius of curvature with a center, wherein when assembled said second surface forms at least a partial continuation of said first surface to form a seat surface (claim 3, lines 5-12); a third surface constructed on the die, the second (the Examiner notes that although the reference does teach such a second surface, that the claim is interpreted such that this limitation should read third as discussed in the above objection) surface having at least a partially spherical shape, said spherical shape having a radius of curvature with a center (claim 3, lines 5-12); said seat surface and said third surface being concentrically engaged at a mutual spherical interface positioned upstream and downstream of said center, said surfaces operatively cooperating to allow the die to pivot relative to the die body about said center of said radius of curvature (claim 3, lines 8-12); an adjustment mechanism constructed in the extrusion die assembly to exert a force on the die at a position downstream from the center of said radius of curvature of said first and second surfaces to cause movement between said surfaces and pivot the die to adjust the relative position of the die within the outlet (claim 3, lines 13-18).

The Examiner notes that the first surface of claim 3 of US6,382,944 is equivalent to the first and second surfaces of the upstream and downstream seat elements constructed for mutual assembly as claimed in Applicant's claim 4 because it would have been obvious to separate the first surface into multiple parts such as upstream

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and downstream seat elements. The mere fact that a given structure is integral does not preclude its consisting of various elements.

***Allowable Subject Matter***

5. Claims 1-3 are allowed.

6. Claims 5 and 6 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 5 and 6 should not be rewritten in independent form without providing antecedent basis for "said attachment mechanism".

7. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest an attachment mechanism constructed to secure the first and second seat elements in the assembled position surrounding the third surface, the mechanism further constructed to limit the movement of the first and second seat elements towards the third surface in order to prevent binding of the seat surface and the third surface in the assembled position in combination with the limitations of claim 1 and 4. The Examiner notes that claims 5 and 6 need not be combined with claim 4, nor is a terminal disclaimer necessary in claim 4, to overcome the double patenting rejection of claim 4 provided the limitation of lines 54-61 of claim 1 are added to claim 4. The Examiner suspects that this was unintentionally removed from claim 4 as evidenced by the lack of antecedent basis in claims 5 and 6.

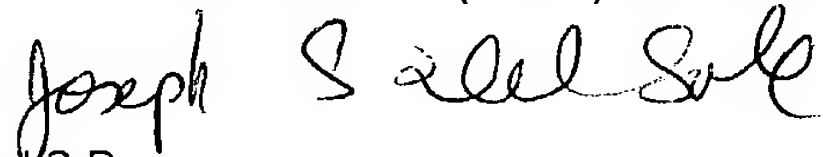
***Correspondence***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

  
J.S.D.

March 15, 2004